



INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA – UAW

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June 16, 2023

Douglas O'Donnell
Deputy Commissioner for Services and Enforcement
Internal Revenue Service
U.S. Department of the Treasury

Re: Section 30D New Clean Vehicle Credit – Docket Number REG–120080–22

Dear Deputy Commissioner O'Donnell:

On behalf of the more than one million active and retired members of the UAW, I want to thank you for the opportunity to share our perspective in response to the Internal Revenue Service's (IRS) proposed rule on the Section 30D New Clean Vehicle Credit.¹

Short Summary

The Section 30D credit is intended to maximize the incentive for manufacturers and the complete supply chain to invest in U.S. production. However, the proposed rule's definitions of processing, constituent materials, and countries with a free trade agreement are too broad, which we fear will undermine efforts to encourage the supply chain to return onshore. The proposed rule's definition of final assembly is not comprehensive enough to safeguard genuine domestic production. Further, the value-added threshold for critical minerals should provide manufacturers with less flexibility to avoid investing in the domestic supply chain. Finally, the IRS should increase transparency of the credit's impact by including a robust reporting requirement.

Discussion

I. Impact on UAW Members

The auto industry drives manufacturing in our country and has played a significant role in creating and sustaining a strong middle class. American autoworkers are more diverse and more unionized than the overall workforce.² Over 1 million people work in motor vehicle parts and manufacturing.³ UAW members work at 26 light-duty vehicle final assembly plants in 8 states building vehicles for a wide variety of

¹ *Section 30D New Clean Vehicle Credit*, 88 Fed. Reg. 23370 (April 17, 2023).

² See Paul Prescod, Jacobin, *We Need A Pro-Worker Transition to Electric Vehicles* (Dec. 20, 2022) ("Black workers have long been overrepresented in auto employment and today make up 16.6 percent of autoworkers (as compared to 12.5 percent of workers in the economy as a whole)... Seventeen percent of autoworkers are under a collective bargaining agreement, while only 11.8 percent of the overall workforce is").

³ See Bureau of Labor Statistics, *Automotive Industry: Employment, Earnings, and Hours*. Retrieved from: <https://www.bls.gov/iag/tgs/iagauto.htm>

applications – from sports cars to work pickups. Additionally, the UAW represents auto parts workers throughout the country making engines, transmissions, stampings, axles, drivelines, seats, interiors, and various other components. The shift to EVs presents a challenge to the employment of workers currently making ICE engines, transmissions, exhaust systems, and fuel systems. Tens of thousands of UAW members have high quality union jobs producing such components. Without sufficient safeguards, we fear federal funding threatens to facilitate a race to the bottom, allowing manufacturers to pit EV jobs against ICE jobs, and ensuring the standards we fought for are absent for the next generation of vehicles and those who build them.

UAW members are fighting to raise the standards in the emerging domestic EV battery cell industry. Workers at Ultium Cells' battery cell plant in Lordstown, OH, voted overwhelmingly to join the UAW by a vote of 710 to 16.⁴ The vote by Ultium workers sent a message that is loud and clear – the EV future must be powered by batteries that are union-made and provide wages, benefits, and workplace safety that is comparable or better than ICE powertrain jobs.

While auto industry profitability has reached record highs in recent years, autoworker wages have not kept pace. Since 2000, inflation adjusted wages have declined by 25% in motor vehicle manufacturing and by 19% in motor vehicle parts manufacturing.⁵ Despite planning to invest over a trillion dollars in electric vehicle production,⁶ major auto companies seek to use the transition to cleaner vehicles in order to roll back hard-fought gains, including by shuttering and offshoring manufacturing facilities, cutting wages, and fighting attempts to include new facilities under existing collective bargaining agreements. We cannot allow the transition to electric vehicles to continue the erosion of job quality in the auto industry. Yet, initial trends are quite troubling. The realized and potential closure of Ford's Romeo Engine Plant, Stellantis' Belvidere Assembly Plant, and General Motors' Lordstown Assembly Plant demonstrate the risk facing autoworkers and our economy if business as usual is allowed to continue. Research indicates that by 2030 the domestic auto industry could add or lose jobs depending on whether EV assembly and parts production is expanded and onshored.⁷

The UAW supports the Inflation Reduction Act's (IRA) revamped Section 30D Clean Vehicle Credit. While not the UAW's preferred version of the credit as passed in the Build Back Better Act,⁸ among all of the IRA's consumer-facing tax credits, 30D includes the most robust protections for the domestic manufacturing workforce. 30D's final assembly, critical mineral, and battery component requirements will do more to ensure that taxpayer funding supports the domestic automobile manufacturing supply chain and the production of union-made vehicles. Nevertheless, current market trends present a real risk to the build-out of the domestic supply chain if we don't get 30D right. We remain concerned that many non-

⁴ UAW. December 9, 2022, "UAW Statement on Ultium Organizing Victory": <https://uaw.org/uaw-statement-ultium-organizing-victory/>

⁵ See Bureau of Labor Statistics. *Average hourly earnings of production and nonsupervisory employees, motor vehicle parts manufacturing, not seasonally adjusted* and *Average hourly earnings of production and nonsupervisory employees, motor vehicle manufacturing, not seasonally adjusted*. January 2000 to February 2023 wages adjusted using Bureau of Labor Statistics *CPI Inflation Calculator*.

⁶ See Paul Lienert, Reuters, Exclusive: Automakers to Double Spending on EVs, Batteries to \$1.2 Trillion by 2030 (Oct. 25, 2022).

⁷ See Jim Barrett and Josh Bivens, Economic Policy Institute, *The Stakes for Workers in How Policymakers Manage the Coming Shift to All-Electric Vehicles* (Sept. 21, 2022) at 11.

⁸ The amended clean vehicle credit proposed by Senator Stabenow and Representative Kildee included a \$4,500 bonus for union-made vehicles. See <https://www.bluegreenalliance.org/wp-content/uploads/2021/12/121521-36D-EV-Tax-Credit-Letter.pdf>

union made vehicles, imported vehicles, and far-flung elements of the supply chain will receive taxpayer subsidy. As of this comment, the following UAW member-made vehicles are eligible for the 30D credit:⁹

| Make and Model | Credit Amount | Final Assembly Location |
|---------------------------|---------------|-------------------------|
| Cadillac Lyriq | \$7,500 | Spring Hill, TN |
| Chevrolet Bolt EV and EUV | \$7,500 | Orion, MI |
| Chevrolet Silverado EV | \$7,500 | Orion, MI |
| Lincoln Aviator PHEV | \$7,500 | Chicago, IL |
| Lincoln Corsair PHEV | \$3,500 | Louisville, KY |
| Ford E-Transit | \$3,750 | Kansas City, MO |
| Ford F-150 Lightning | \$7,500 | Dearborn, MI |
| Ford Escape PHEV | \$3,750 | Louisville, KY |
| Jeep Grand Cherokee PHEV | \$3,750 | Detroit, MI |
| Jeep Wrangler PHEV | \$3,750 | Toledo, OH |

For model years 2022 to 2024, roughly twenty vehicles are eligible for the 30D credit, resulting in an even split of 10 union and 10 non-union vehicles.¹⁰ While the U.S. auto manufacturing industry is union dense, 30D's final assembly, critical mineral, and battery component requirements are not stringent enough to prevent the credit from applying to vehicles produced by automakers who have shifted production to Mexico and Canada. To the extent 30D may serve as a potential incentive for the further offshoring of manufacturing jobs, or merely dissuade original equipment manufacturers (OEMs) from onshoring more of these jobs, we urge the IRS to adjust the proposed rule to mitigate against these risks.

Under the proposed regulations implementing 30D, approximately 65% of all EVs sold in the U.S. last year were eligible for a partial or full 30D credit.¹¹ Along with the anticipated utilization of the Section 45W Commercial Clean Vehicle Credit's lease loophole,¹² a substantial portion of U.S. EV sales are poised to benefit from taxpayer subsidy. This will come at the same time we are seeing manufacturers use the cost of EVs as an excuse to cut jobs¹³ and use battery plants to degrade job quality.¹⁴ For these reasons, accomplishing the IRA's goal to "promote resilient supply chains and domestic manufacturing" will require

⁹ Federal Tax Credits for Plug-in Electric and Fuel Cell Electric Vehicles Purchased in 2023 or After, <https://www.fueleconomy.gov/feg/tax2023.shtml>

¹⁰ Vehicle models eligible under multiple trim levels and battery capacities were combined for this analysis. *See id.*

¹¹ BNEF, US EV Credit Rules Favor Home Teams, Snub Overseas Players (April 27, 2023), <https://about.bnef.com/blog/us-ev-credit-rules-favor-home-teams-snob-overseas-players/>

¹² Tom Krisher, "The easiest way to get a \$7,500 tax credit for an electric vehicle? Consider leasing", (AP News, May 30, 2023), <https://apnews.com/article/electric-vehicle-lease-buy-cheaper-tax-credit-6cfe4101ad04bd993c634d860ec5598b> ("In April [2023], [J.D. Power] said, leases accounted for 41% of all U.S. EV deliveries — four times the percentage in December, before the new [30D] rules took effect").

¹³ *The Washington Post*. April 26, 2023. "Auto giant Stellantis offers buyouts to 33,500 workers": <https://www.washingtonpost.com/business/2023/04/26/auto-giant-stellantis-offers-buyouts-33500-workers/>; *Reuters*. May 21, 2021. "Daimler Truck predicts engine job losses in transition to 'green' trucks": <https://www.reuters.com/business/autos-transportation/daimler-truck-predicts-engine-job-losses-transition-green-trucks-2021-05-21/>

¹⁴ The White House. June 2021. "Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth": <https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf>, p. 120 ("the automotive battery plants that are in existence or are advertising for production workers pay much less than existing powertrain plants").

the IRS to include additional safeguards to ensure 30D supports quality union jobs and the domestic production of EVs, batteries, parts and components.¹⁵ Unless and until we build a comprehensive domestic EV supply chain, the transition to EVs will risk trading dependency on fossil fuels for dependency on imported EVs, batteries, fuel cells, and materials, all while hollowing out quality union jobs in the process.¹⁶

II. Final Assembly

The proposed rule defines final assembly as “the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.”¹⁷ To support the build-out of the domestic EV supply chain, the definition of final assembly should be comprehensive and reward automakers that are investing in U.S. production. Automakers that have committed to domestic manufacturing should not be undermined by competitors that may try to circumvent the North American assembly requirement by establishing small regional operations in which vehicles pass through with limited assembly in-region or through so-called knock-down kit assembly. Like the definition of “final assembly” found in the Automobile Parts Content Labeling (49 CFR Part 583.3), final assembly locations should include assembly of body panels, painting, chassis assembly, trim installation, and other assembly and fabrication processes that are currently found in established final assembly plants. We urge the IRS to adopt a final assembly definition that maximizes the incentive for automakers to invest in U.S. production.

III. Critical Mineral Requirements

The proposed rule lays out a three-step process for determining compliance with 30D’s critical minerals requirement: (1) determine the procurement chains, (2) identify the qualifying critical minerals, and (3) calculate the qualifying critical mineral content.¹⁸ This comment address aspects of the second step.

A. Value-Added Threshold

Under step two, each procurement chain in a battery is evaluated to determine whether the critical minerals have been extracted/processed in the United States, in any country with which the United States has a free trade agreement (FTA) in effect, or recycled in North America. For vehicles placed in service in 2023 and 2024, a critical mineral satisfies this domestic or FTA country procurement requirement if 50% or more of the value added to the critical mineral by extraction, processing, or recycling was done in these locations. We are concerned this 50% threshold provides manufacturers will excessive flexibility to satisfy the requirement without achieving a bona fide connection to the domestic or trade partner supply chain. For example, in accordance with the goals of the IRA, the overwhelming share of lithium processing should

¹⁵ Supra note 1.

¹⁶ See Comments of Senator Joe Manchin III on the Section 30D New Clean Vehicle Credit Before the Internal Revenue Service, Department of Treasury Reg-120080-22 (June 11, 2023), https://www.manchin.senate.gov/imo/media/doc/clean_vehicle_credit.pdf?cb (“[the credit] has done little to promote the development of the domestic supply chains needed to produce the batteries used to power vehicles”).

¹⁷ Supra note 1 at 23373.

¹⁸ See *id.* at 23375-77.

occur in the U.S. or an FTA country. Yet, under the proposed value-added threshold, lithium inexpensively extracted in a non-FTA country would satisfy the standard so long as it is accompanied by more expensive processing in the U.S. or an FTA country (and vice versa). In our view, this test does not get us closer to a resilient domestic supply chain. A higher threshold that also combines the extraction, processing, and recycling processes will incentivize manufacturers to expedite the onshoring of this work.

Moving forward the value-added and qualifying content calculations should be rigorous and require that the content calculations are effectively in line with the intention of the legislation. Overly flexible calculations that allow for rounding and averaging at various points in the calculation will weaken the incentive to source critical minerals from North America or FTA countries. Given the scope of countries that already have FTAs with the United States and their access to mineral supply chains, additional flexibilities would unnecessarily weaken the program.

B. Definition of Processing and Constituent Materials

Under the proposed rule, critical mineral processing is defined as “the non-physical processes involved in refining of nonrecycled substances or materials, including the treating, baking, and coating processes used to convert such substances and materials into constituent materials.” Constituent materials are then defined as “materials that contain applicable critical minerals and are employed directly in the manufacturing of battery components.”

We are concerned that an overly broad definition of critical mineral processing that includes “constituent materials” stretches beyond a common understanding of the line between mining and manufacturing. Many of the components included in the definition of “constituent materials” – including electrode active materials, foils, and electrolytes – are better understood as manufactured battery components that go beyond processing and purifying mined materials. Putting “constituent materials” under critical mineral content requirements rather than battery components content requirements effectively enables crucial parts of the EV battery value chain to qualify while avoiding the requirement that they be manufactured in North America. The result is to undermine the incentive to create a resilient domestic supply chain and the major investments and jobs that would be associated with it.

To understand the importance of the “constituent materials”, one need only look at China’s current dominance of the battery supply chain to realize how crucial these “constituent materials” are and how disconnected they are from mining. China plays a relatively small raw mineral extraction, the country dominates the mid-stream of battery production, including 78% of cathode production and 91% of anode production.¹⁹ To develop a resilient domestic supply chain for EV batteries, it is crucial we incentive sourcing and investment of these products in the U.S.

To avoid the inappropriate inclusion of battery manufacturing processes in the evaluation of critical mineral processing, we encourage the EPA to limit processing to the activities that *do not* occur at battery and battery component manufacturing facilities. While we recognize the line between processing and manufacturing is a grey one, in order to effectively capture the actual value of both processing and manufacturing, the IRS’s analysis must reflect that processes like treating, baking, and coating are fundamental aspects of the manufacturing process. Therefore, the proposed rule’s definition of

¹⁹ See Green Cars Report. October 2022. “Benchmark: China dominates Li-ion battery supply chain”: <https://www.greencarcongress.com/2022/10/20221009-benchmark.html>

processing and constituent materials should be narrowed to exclude processes performed during battery manufacturing.

C. Definition of Free Trade Agreement Country

The proposed rule lays out the following criteria to identify countries with which the U.S. has a trade agreement: whether the agreement (1) reduces or eliminates trade barriers on a preferential basis, (2) commits the parties to refrain from imposing new trade barriers, (3) establishes high-standard disciplines in key areas affecting trade (such as core labor and environmental protections), and/or (4) reduces or eliminates restrictions on exports or commits the parties to refrain from imposing such restrictions on exports. We are concerned these criteria do not properly reflect the original purpose for including FTA countries as eligible components of the supply chain. Chiefly, this inclusion was intended to create a more resilient supply chain for our national security, economic security, and technological leadership.²⁰

Using the example of Japan as an FTA country due to the recently concluded Critical Mineral Agreement (CMA), we are skeptical that the inclusion of Japan's critical minerals in the credit's eligible supply chain will have any meaningful effect on supply chain resilience. The Japan-US CMA covers five critical minerals, all of which are crucial to the production of EVs and batteries. However, for four of the five minerals, Japan is not a major import source to the United States.²¹ For the fifth, cobalt, Japan accounts for just 13% of the total imported to the United States.²² At the same time, Japan's biggest import to the United States is automobiles, parts, and accessories.²³ As a result, the proposed rule's criteria for an FTA country, and its inclusion of a country like Japan, risks providing a pathway for taxpayer subsidy to incredibly competitive foreign manufacturers in exchange for access to a critical mineral supply chain that we do not use. We urge the IRS to adopt an FTA country definition that is more compatible with the intent of the IRA to promote resilient supply chains and domestic manufacturing.

The definition of Free Trade Agreements should be limited to comprehensive free trade agreements that have been subject to congressional oversight and stakeholder consultation. What's more, to protect domestic manufacturing, any FTA country definition should only include agreements that contain robust labor standards with enforceable commitments to protect the freedom of association and high wage standards. Given the number of countries with FTAs, their coverage of the battery supply chain, the IRA's subsidies for domestic production of critical minerals, and the flexibilities in the calculation of qualifying critical minerals, an overly expansive definition of FTA countries both sets a troubling precedent for trade policy and is unnecessary to create a feasible qualification standard.

IV. Battery Component Requirements

The proposed rule lays out a four-step process for determining compliance with 30D's battery component requirement: (1) identify the components that are manufactured or assembled in North America, (2) determine the incremental value of each battery component and North American battery components,

²⁰ Supra note 1 at 23376.

²¹ U.S. Department of the Interior, U.S. Geological Survey, Mineral Commodity Summaries, p. 7 (2022), <https://pubs.usgs.gov/periodicals/mcs2022/mcs2022.pdf>.

²² See *id.*

²³ Observatory of Economic Complexity, Japan and United States Trade, <https://oec.world/en/profile/bilateral-country/jpn/partner/usa>

(3) determine the total incremental value of battery components, and (4) calculate the qualifying battery component content.

In determining the value of qualifying battery components, it is crucial that calculations demand robust levels of North American content that are effectively in-line with the levels proscribed by the IRA. Overly flexible calculations that allow for rounding and averaging at various points in the calculation will weaken the incentive to source batteries from North America. Given the recent boom in battery cell production investments and planned battery capacity in the U.S.,²⁴ the regional battery content requirements are feasible and 30D should reward manufacturers that are committed to domestic manufacturing. Furthermore, flexibilities in the qualifying content requirements are unnecessary due to the IRA significant subsidies to support domestic production of batteries, particularly the IRA's \$45 per kilo-watt-hour tax for the production of battery cells and modules.

V. Reporting Requirements

Congress's unprecedented investment in our nation's infrastructure, manufacturing, and the clean economy requires concomitant oversight of this funding. We urge the IRS to employ its full range of oversight and investigatory powers to ensure that companies benefitting from the 30D tax credit are accountable to the public and remain in compliance with tax, labor, and employment law. A robust oversight program, including via periodic reporting, is warranted to promote transparency and to ensure credit recipients faithfully adhere to the requirements of law and regulation throughout their enterprise.

30D requires OEMs to periodically furnish reports to the IRS on specific items. In our view, the IRS has broad authority to request additional information from OEMs. We encourage the IRS to make these reports available to the public. Reports should include assembly location, battery component sourcing, and critical mineral sourcing to the greatest extent possible. To fully assess the economic impacts of the credit program, the IRS should require that qualified manufacturers report:

- The sales of eligible vehicles and estimated tax credit utilization by customers.
- The total job and collective bargaining status at the North American final assembly plants of eligible vehicles.
- The total value of the credits claimed by customers.

To ensure that consumers can make informed decisions about EV purchases, consumers should be provided with information on final assembly location, battery cell assembly location, battery cell manufacturer, regional battery component content percentages, critical mineral content percentages, the union status of final assembly and cell assembly locations, as well as information already required under the American Automobile Labeling Act. Waivers and exceptions for OEMs should be used sparingly on a case-by-case basis and the public should have the ability to weigh in before waivers are granted.

Additionally, the IRS should consider re-purposing and strengthening the EPA's Clean School Bus Program's OEM Job Quality and Workforce Development questionnaire.²⁵ The questionnaire should include, but not be limited to, the following:

- Whether the manufacturer commits to
 - remain neutral during a union organizing campaign?

²⁴ See Federal Reserve Bank of Dallas. October 11, 2022. "Automakers' bold plans for electric vehicles spur U.S. battery boom": <https://www.dallasfed.org/research/economics/2022/1011>

²⁵ See EPA, Request for Information about OEM Job Quality and Workforce Development Practices (April 2023).

- permit card check union recognition?
 - allow union organizers access to the facility?
 - refrain from holding captive audience meetings?
 - collectively bargain in good faith?
 - offer its workers the union prevailing wage?
 - offer its workers health insurance?
 - offer its workers paid leave?
 - offer its workers a retirement plan?
 - offer a registered apprenticeship program?
- Disclosure of the manufacturer's
 - record of compliance with labor and employment law, including unfair labor practices, and OSHA and whistleblower citations.
 - historical use of contracting and subcontracting arrangements, including the use of staffing or temporary work agencies.
 - existing collective bargaining relationships.
 - hiring of so-called "union avoidance" firms and other anti-labor consultants.

Conclusion

The potential impact of the 30D credit, as proposed, should not be understated. The future of the EV transition and the domestic auto industry could depend on how well the credit induces automakers and companies along the supply chain to invest in U.S. production. For the transition to be successful, our economy will rely on high-quality union jobs for the workers who build batteries and EVs. We encourage the IRS to prioritize the impact of 30D on these workers as it seeks to finalize the proposed rule.

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